

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Petition for Declaratory Ruling of Image Access, Inc. d/b/a NewPhone were delivered by messenger on this 13<sup>th</sup> day of June, 2006 to the parties listed below.

  
Kathleen Culbertson

Best Copy and Printing, Inc.  
Portals II  
445 12<sup>th</sup> Street, SW, Room CY-B402  
Washington, DC 20554

Tamara Preiss  
Division Chief  
Pricing Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Don Stockdale, Jr.  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**EXHIBIT A**

*For less than **\$15.00** a month<sup>1</sup>, you get...*

- **Local Service** with your choice of 2 calling features such as Caller ID Deluxe, Call Waiting Deluxe, Call Return (\*69), Three-Way Calling and more -- at no additional charge for 12 months!<sup>2</sup>
- **BellSouth® Long Distance Service** for only ~~\$4~~ **5¢ a minute** -- WITH NO MONTHLY FEE for 12 months!<sup>3</sup>
- **BellSouth® Voice Mail Service** -- for 12 months -- so you never miss a call!<sup>4</sup>  
(Available upon request.)
- **Local service connection fee waived** -- a savings of up to \$41.00!

*Plus, we'll give you **\$50 CASH BACK**<sup>5</sup> to spend any way you want!*

*Only BellSouth delivers the quality, service and reliability you deserve.*

To sign up for this offer today, call us toll free at **1.877.359.3602**,  
Monday through Friday, 8 a.m. - 7 p.m. EST and Saturday, 8 a.m. - 5 p.m. EST.  
Or visit us online any time at [bellsouth.com/welcome](http://bellsouth.com/welcome).

**@ BELLSOUTH**  
*Listening. Answering.®*

Para español por favor llame al 1.888.698.8474.

CD05-3/1/98  
000704-A

(see back for more details)

H002AE-6/19

>> Don't panic.

Even if your dog ate your mail,  
he didn't chew up your last chance to  
tear into this great new offer!

For less than **\$15<sup>00</sup>\*** a month, you get...

- Local Service with your choice of 2 calling features such as Caller ID Deluxe, Call Waiting Deluxe, Call Return (\*69), Three-Way Calling and more — at no additional charge for 12 months!<sup>1</sup>
- BellSouth® Long Distance Service for only 5¢ A MINUTE — WITH NO MONTHLY FEE for 12 months!<sup>2</sup>
- Voice Mail — for 12 months — so you never miss a call!<sup>3</sup> (Available upon request.)

PLUS, we'll waive your local service connection fee — a savings of up to \$41.00!

And give you  
**\$50 CASH BACK**  
to spend any way you want!<sup>4</sup>

It all adds up to one sweet deal! Plus, the more services you add, the more you SAVE — high-speed Internet services, DIRECTV® service and Cingular Wireless®. Only BellSouth delivers the quality, service and reliability you deserve. There's no need to go anywhere else!

To sign up for this offer today, call us toll free at 1.877.761.7240,  
Monday through Friday, 8 a.m. – 7 p.m. EST  
and Saturday, 8 a.m. – 5 p.m. EST.  
Or visit us online at [bellsouth.com/welcome](http://bellsouth.com/welcome).

Para español por favor llame al 1.844.211.0240.

AS AN ADDED BONUS,  
order DIRECTV service from  
BellSouth and receive a 4-room  
DIRECTV® System — FREE  
with your annual commitment  
to any TOTAL CHOICE®  
programming package.<sup>5</sup>

Includes satellite dish,  
up to 4 standard receivers,  
and standard installation.  
(Offer available on approved credit.)

Ask about DIRECTV's great offer  
for premium channels.

**@ BELL SOUTH**  
Listening. Answering.®

\*Discounted rate excludes taxes, fees & other charges for new qualifying residential customers for 12 months. Rate will vary depending on geographic location. Normal non-discounted rate applies thereafter. \*\*Cash back coupon to customers who switch local telephone service to BellSouth and subscribe to local service, 2 calling features and a BellSouth Long Distance plan. Check will be sent within 4-6 weeks after receipt of coupon to customers who retain qualifying service. Valid for one service line at the intended local service address. Offer ends 12/31/05. Customers must not have had local service with BellSouth 30 days prior to new service connection date. One \$50 Cash Back (reacquisition) promotion per customer per 12-month period. 1) Features must be compatible & are subject to availability. Some features require additional equipment. Long distance or expanded local calling rates may apply for Call Return, Call Forwarding and Three-Way Calling. Free calling features & optional voice mail available to customers who switch their local service to BellSouth from another provider and purchase local service and choose 2 calling features from BellSouth. At the end of 12 months, customer will be billed at regular rates for local service and calling features. 2) Nickel Value Promotion: Offer ends 4/30/06. Customers must not have subscribed to any BellSouth Long Distance service within five (5) days prior to their enrollment in this promotion. A \$3.95 monthly recurring charge applies after 12 billing invoices. International calls extra. A Carrier Cost Recovery Fee of \$0.99 will be charged monthly. This fee is not a tax or charge imposed or required by any government. Taxes, fees and other charges, including Universal Service Fund, apply. 3) DIRECTV Free Equipment & Installation requires subscription to 12 consecutive months of any DIRECTV® TOTAL CHOICE® programming package (\$41.99/mo. or above). DIRECTV PARA TODOS programming package (\$29.99/mo. or above) or qualifying international services bundle within 30 days of equipment purchase. Offer available on approved credit. \$19.95 handling and delivery fee applies. \$4.99/mo. for separate programming on second and each additional TV. Offer ends 7/31/05. In certain markets, programming and pricing may vary. FAILURE TO ACTIVATE THE DIRECTV SYSTEM WITHIN 30 DAYS OF PURCHASE MAY RESULT IN A CHARGE OF \$150 PER DIRECTV RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN AN ANNUAL PROGRAMMING COMMITMENT, DIRECTV MAY CHARGE A PROMOTED FEE OF UP TO \$150. IN LIEU OF PAYMENT, YOU HAVE AN OPTION TO SEND YOUR DIRECTV SYSTEM TO DIRECTV. VISIT [DIRECTV.COM](http://DIRECTV.COM) OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change. Taxes not included. Equipment specifications and programming options may vary in AK or HI. DIRECTV services not provided outside the U.S. Receipt of DIRECTV programming is subject to the terms and conditions of the DIRECTV Customer Agreement; copy provided at [DIRECTV.com](http://DIRECTV.com) and in your first bill.

BellSouth Promotion Restrictions: Valid for one service line at the intended local service address. Customers must not have had local service with BellSouth 10 days prior to new service connection date. BellSouth employees not eligible. Promotion ends 12/31/05.

Advertised services & features not available in all areas. All offers may be modified or discontinued at any time without notice. Long distance provided by BellSouth Long Distance, Inc. ©2005 BellSouth Corporation. All BellSouth marks contained herein are owned by BellSouth Intellectual Property Corporation. DIRECTV and the Cyclone design logo, TOTAL CHOICE and DIRECTV PARA TODOS are registered trademarks of DIRECTV, Inc.



06/16-0730332

**Hurry! Act Now!**

P.O. Box 530590  
Birmingham, AL 35253-0590

Dear Gene Dry,

Simple is good, and here's an offer that's simply perfect for you.

For only **\$22.95** a month,<sup>1</sup> you'll get...

- Unlimited local calls with the BellSouth® PreferredPack® Bundle<sup>2</sup>
- Our most popular calling features, such as Caller ID Deluxe, Call Waiting Deluxe, Call Return (\*69), and Three-Way Calling, for much less than you would pay for each feature separately.<sup>3</sup>
- BellSouth® Long Distance Service for only 5¢ a minute — WITH NO MONTHLY FEE for 12 months!<sup>4</sup>
- No connection charge to come back to BellSouth!

Plus, we'll give you  
**\$100 CASH BACK<sup>5</sup>**  
to spend any way you want!

Order additional services and save! Get an extra \$100 CASH BACK<sup>6</sup> when you order BellSouth® FastAccess® DSL Ultra plus either Cingular Wireless® OR DIRECTV® service from BellSouth! That's a total of \$200 CASH BACK! Ask our sales associate for details.

BellSouth is the one company that offers it all — high-speed Internet services, local and long distance, Cingular Wireless and DIRECTV service.

To sign up for this offer today, call us toll free at 1.877.876.6762, Monday through Friday, 8 a.m. – 7 p.m. EST and Saturday, 8 a.m. – 5 p.m. EST and be sure to mention promo code AG05B.  
Or visit us online any time at [bellsouth.com/welcome](http://bellsouth.com/welcome).

Sincerely,

Carlos A. Salinas  
Senior Director  
Consumer Marketing

Para español por favor llame al 1.888.734.9222.

1) Quoted rate excludes taxes, fees & other charges for new qualifying residential customers. Rate will vary depending on state and geographic location and is subject to change. 2) BellSouth® PreferredPack® Plan features must be compatible & are subject to availability. Some features require additional equipment. Long distance or expanded local calling rates may apply for Call Return, Call Forwarding and Three-Way Calling. 3) Calling features must be compatible & are subject to availability. Some features require additional equipment. Long distance or expanded local calling rates may apply for Call Return, Call Forwarding and Three-Way Calling. 4) Nickel Savings Value Promotion: Offer ends 12/31/05. Customers must not have subscribed to any BellSouth® Long Distance service within two (2) days prior to their enrollment in this promotion. A \$3.95 monthly recurring charge applies after 12 billing invoices. International calls extra. A Carrier Cost Recovery fee of \$0.99 will be charged monthly. This fee is not a tax or charge imposed or required by any government. Taxes, fees and other charges, including Universal Service Fund, apply. 5) Cash Back coupon to customers who switch local telephone service to BellSouth and purchase the BellSouth® Complete Choice® plan or the BellSouth® PreferredPack® plan. See coupon for redemption details. Check will be sent within 4-6 weeks after receipt of coupon to customers who retain qualifying service. Offer ends 12/31/05. Other conditions apply. 6) Cash Back: Customers can get \$100 cash-back coupon with new purchases of both BellSouth® FastAccess® DSL plan and qualifying DIRECTV® plan, or both BellSouth® FastAccess® DSL plan and Cingular Wireless® plan (\$39.99 or higher) from BellSouth. BellSouth® FastAccess® DSL is not eligible. Qualifying service that is disconnected and re-established during promotional period not eligible for cash back. Check to be sent 4-6 weeks after receipt of coupon to customers who retain qualifying service. See coupon for redemption details. Other restrictions apply. Offer ends 8/31/05.

BellSouth Offers: Valid for one service line at the intended local service address. Customers must not have had local service with BellSouth 10 days prior to new service connection date. Advertised services and features not available in all areas. All offers may be modified or discontinued at any time without notice. Applicable taxes and fees based on the full price of all products and services, and no taxes, fees or shipping and handling charges will be added to any reward or rebate. Long distance provided by BellSouth® Long Distance, Inc. DIRECTV service provided by DIRECTV, Inc. and is subject to credit approval. ©2005 BellSouth Corporation. All trademarks and service marks contained herein are the property of their respective owners.

**N**OT IMPRESSED WITH THE HEROICS OF YOUR PHONE COMPANY? SWITCH TO Bellsouth.  
WE PROMISE TO WORK AS HARD AS WE CAN TO MAKE SURE ALL OF YOUR NEEDS ARE MET.  
AND THE BEST PART IS, WE WON'T HAVE TO WEAR TIGHTS TO DO IT.

BellSouth is the one company that offers it all with local, long distance, Internet services, satellite TV and Cingular Wireless®. Simply put, this is a package you can't afford to pass up.

**For less than \$35.00 a month,<sup>1</sup> you get...**

- Local Service with your choice of 2 calling features such as Caller ID Deluxe, Call Waiting Deluxe, Call Return (\*69), Three-Way Calling and more — at no additional charge for 12 months!<sup>2</sup>
- BellSouth® Unlimited plan for long distance...24 hours a day, 7 days a week.<sup>3</sup>
- Voice Mail — for 12 months — so you never miss a call!<sup>4</sup> (Available upon request.)

PLUS, we'll waive your local service connection fee — a savings of up to \$41.00!

**And give you \$75 CASH BACK<sup>5</sup> to spend any way you want!**

As an added bonus, order DIRECTV® service from BellSouth, and you'll get a DIRECTV® system and standard professional installation for up to four rooms — FREE!

*Only BellSouth delivers the quality, service and reliability you deserve.*

To sign up, call us today toll free at 1.877.315.8253,  
Monday through Friday, 8 a.m. – 7 p.m. EST and Saturday, 8 a.m. – 5 p.m. EST.  
Or visit us online any time at [bellsouth.com/welcome](http://bellsouth.com/welcome).

Para español por favor llame al 1.888.688.7784.

**BELLSOUTH**  
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Q005/1R

H503AE-4/21

1) Discounted rate (excluding taxes, fees & other charges) for new qualifying residential customers. Normal non-discounted rate applies for subscribed services after 12 months. Rate will vary depending on state and geographic location. Includes \$2.00/mo. companion services package for optional Voice Mail Service. BellSouth employees are not eligible for this offer. 2) Free calling features & optional voice mail: Available to customers who switch their local service from another provider and subscribe to two calling features and a domestic BellSouth Long Distance plan. Other restrictions may apply. 3) BellSouth® Unlimited plan for long distance is for domestic residential voice usage only. Callers under this plan must dial 1 + area code + domestic number, international calls extra. Usage in excess of typical residential usage, which is presumed to be 5000 minutes per month, will be subject to an additional fee of \$50. Other terms, conditions & restrictions apply. Taxes, fees & other charges, including Universal Service Fund, apply. 4) Cash Back: \$50 cash back to customers who switch local telephone service to BellSouth and purchase local service plus 2 calling features and a BellSouth Long Distance plan by December 31, 2005. \$25 cash back to residential customers with new purchase of a domestic BellSouth Unlimited Long Distance Plan by August 31, 2005. Offers exclude customers moving existing qualifying services to a new service address and customers moving from one BellSouth Unlimited Long Distance Plan to another such plan. Coupon redemption required. See coupon for redemption details. Checks will be sent within 4-6 weeks after receipt of coupons to customers who retain qualifying services. Other conditions apply. One (1) per acquisition reward per customer per 12-month period. 5) DIRECTV Free Equipment & Installation requires subscription to 12 consecutive months of any DIRECTV® TOTAL CHOICE® programming package (\$41.99/mo. or above), DIRECTV PAPA 1000S programming package (\$29.99/mo. or above) or qualifying International services bundle within 30 days of equipment purchase. Offer available on approved credit. \$19.95 handling and delivery fee applies. \$4.99/mo. for separate programming on second and each additional TV. Offer ends 7/31/05. In certain markets, programming and pricing may vary. FAILURE TO ACTIVATE THE DIRECTV SYSTEM WITHIN 30 DAYS OF PURCHASE MAY RESULT IN A CHARGE OF \$150 PER DIRECTV RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN AN ANNUAL PROGRAMMING COMMITMENT, DIRECTV MAY CHARGE A PRORATED FEE OF UP TO \$150. IN LIEU OF PAYMENT, YOU HAVE AN OPTION TO SEND YOUR DIRECTV SYSTEM TO DIRECTV. VISIT [DIRECTV.COM](http://DIRECTV.COM) OR CALL 1.800.DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change. Taxes not included. Equipment specifications and programming options may vary in AK or HI. DIRECTV services not provided outside the U.S. Receipt of DIRECTV programming is subject to the terms and conditions of the DIRECTV Customer Agreement; copy provided at [DIRECTV.com](http://DIRECTV.com) and in your first bill.

BellSouth Offers: Valid for one service line at the intended local service address. Customers must not have had local service with BellSouth 10 days prior to new service connection date. Advertised services and features not available in all areas. All offers may be modified or discontinued at any time without notice. Applicable taxes and fees based on the full price of all products and services, and no taxes, fees or shipping and handling charges will be added to any reward or rebate. Long distance provided by BellSouth® Long Distance, Inc. DIRECTV service is provided by DIRECTV. ©2005 BellSouth Corporation. All trademarks and service marks contained herein are the property of their respective owners.

08-0275504

## >> How can you enjoy \$249 in savings? "Bundling" is the answer.

Dear Samuel Adams:

Simplifying your life. Giving you more for less money. That's what the BellSouth® Value Answers™ bundle is all about. This special bundle offers more features than comparable plans from other companies—with extra annual savings too.

Become a BellSouth® Complete Choice® plan\* customer and you'll enjoy unlimited local calling and special features that let you manage your calls. You'll also become eligible for \$5 monthly savings on other services, including high-speed Internet, Cingular Wireless® and DIRECTV® Service. Add the BellSouth® Unlimited Plan for long distance and you can double your savings up to \$10 a month. The two bundle options below include Complete Choice and highlight how you can start saving today.

### BellSouth Value Answers bundle

#### >> with the Nickel Value Plan

- BellSouth Complete Choice plan, including unlimited local calling and multiple calling features such as Caller ID Deluxe, Call Waiting, Call Block, Call Forwarding and more.
- BellSouth® Nickel Value plan for long distance calls to anywhere in the U.S., anytime, for only 5 cents per minute. As a bonus, you'll receive 100 free minutes each month for three months†.

**\$34.95/month†**

**Save up to \$165 for the first year\*\***

### BellSouth Value Answers bundle

#### >> with the Unlimited Plan for long distance

- BellSouth Complete Choice plan
- BellSouth Unlimited Plan for long distance calling anywhere in the U.S., anytime, for one low monthly rate. Get \$25 cash back†.

**\$54.99/month†**

**Save up to \$249 for the first year\*\***

**\$25 Cash Back†**

BellSouth also gives you extra benefits no other company can offer:

- Get all these services from BellSouth—local, long distance, international, Internet, Cingular Wireless, and DIRECTV service
- Award-winning customer service
- Customized bundles that fit your lifestyle with extra savings

Sign up before it's too late.

These offers are only available for a limited time, so sign up today. To get all the services you need, cash back, special savings, and our award-winning customer service, call 1.877.294.2105 today.

Sincerely,

*Kim S. Whitehead*

Kim S. Whitehead  
Vice President, Consumer Segment Marketing

Get up to \$25 cash back with BellSouth Answers.  
Hurry, offer ends soon.  
Call 1.877.294.2105 or visit [bellsouth.com/cashback](http://bellsouth.com/cashback).

**BELLSOUTH**  
Listening. Answering.®

**© BELLSOUTH®**

**PAY TO THE ORDER OF**

221 285 \*\*\*\*\*AUTO\*\*3-DIGIT 701

### Samuel Adams

8232 Pritchard Pl.

**New Orleans LA 70118-3156**



**Hurry, offer ends soon.**

**up to \$25.00**

**up to twenty-five dollars<sup>00/100</sup>**


Kim S. Whitehead

**Vice President, Consumer Segment Marketing**



P.O. Box 530590  
Birmingham, AL 35253-0590

UV13LAE-0297007-07/14

Gene Dry  
1328 Octavia St.  
New Orleans, LA 70115-4225  


Dear Gene Dry,

Simple is good, and here's an offer that's simply perfect for you.

**For just \$44.99 a month for 12 months,<sup>1</sup>**  
**you'll get the BellSouth® Unlimited Answers<sup>SM</sup> Bundle, which includes:**

- BellSouth® Unlimited Plan for long distance...24 hours a day, 7 days a week.<sup>2</sup>
- Unlimited local service
- BellSouth® Voice Mail service...so you never miss a call. (Available upon request.)
- Caller ID Deluxe, Call Waiting Deluxe, Call Return (\*69), Three-Way Calling, Call Forwarding, Call Block and more.<sup>3</sup>
- Local service connection fee waived — a savings of up to \$41.00!

This plan is normally \$49.99 a month. But, with this special offer, you'll get a \$5.00 a month discount for the first twelve months — a savings of \$60.00!

**We'll give you a \$100 Visa® Reward Card plus**  
**\$25 CASH BACK for the Unlimited Plan!<sup>4</sup>**

BellSouth is the one company that offers it all — high-speed Internet services, local and long distance, Cingular Wireless® and DIRECTV® service.

Ask us how to get a free DIRECTV® DVR, plus a standard DIRECTV® System for up to 3 additional rooms, including standard installation.<sup>5</sup> (After \$100 mail-in rebate from DIRECTV on approved credit. Programming commitment required.) Plus, ask about great exclusive sports packages from DIRECTV!

To sign up for this offer today, call us toll free at 1.888.247.4184,  
Monday through Friday, 8 a.m. — 7 p.m. EST and Saturday, 8 a.m. — 5 p.m. EST  
and be sure to mention promo code AR05.  
Or visit us online any time at [bellsouth.com/welcome](http://bellsouth.com/welcome).

Sincerely,



Carlos A. Salinas  
Senior Director, Consumer Marketing

Para español por favor llame al 1.877.572.2139.

3) Discounted rate for new qualifying residential customers for 12 months. Rate will vary depending on state and geographic location. Normal non-discounted rate applies thereafter. Rate excludes taxes, fees & other charges. BellSouth employees are not eligible for this offer. Offer ends 12/31/05. 2) BellSouth® Unlimited Plan is for domestic residential voice usage only. Callers under this plan must dial 1 + area code + domestic number. International calls extra. Usage in excess of typical residential usage, which is presumed to be 5000 minutes per month, will be subject to an additional fee of \$30. Other terms, conditions & restrictions apply. Taxes, fees & other charges, including Universal Service Fund, apply. 3) Calling features must be compatible & are subject to availability. Some features require additional equipment. Long distance or expanded local calling rates may apply for Call Return, Call Forwarding and Three-Way Calling. 4) \$100 Visa® Reward Card coupon available to customers who switch local telephone service to BellSouth and purchase the BellSouth® Complete Choice® plan or the BellSouth® PreferredPack® plan by 12/31/05. Coupon redemption required. See coupon for redemption details. Visa Reward Cards are provided, not sold, by BellSouth as a promotional reward. Cards are issued by a participating bank and are subject to the bank's terms and conditions provided with the Visa Reward Card. Under those terms, certain fees may be assessed against beginning in the 7th month after date of issuance. The Visa Reward Card will be sent 4 to 6 weeks after BellSouth's receipt of coupon to customers who retain qualifying services. One \$100 Visa Reward per customer per 12-month period. Cards issued by JPMorgan Chase Bank, N.A. pursuant to a license by Visa® and managed by Ecount®, a member service provider of JPMorgan Chase Bank. \$25 cash back to residential customers with new purchase of a domestic BellSouth® Unlimited Long Distance plan by 9/30/06. Offer excludes customers moving existing qualifying services to a new service address and customers moving from one BellSouth® Unlimited Long Distance plan to another such plan. Coupon redemption required. See coupon for redemption details. Check will be sent within 4-6 weeks after receipt of coupon to customers who retain qualifying service. Other conditions apply. 5) DIRECTV® DIRECTV service provided by DIRECTV and subject to credit approval, land-based phone line connection required. Offer available starting 8/1/05. In certain markets, programming and pricing may vary. Programming, pricing, terms and conditions subject to change. Taxes not included. Receipt of DIRECTV programming is subject to the terms of the DIRECTV Customer Agreement; copy provided at DIRECTV.com and in your first bill. ©2005 DIRECTV, Inc. DIRECTV and the Cyclone Design logo are registered trademarks of DIRECTV, Inc.

BellSouth Offers: Valid for one service line at the intended local service address. Customers must not have had local service with BellSouth 10 days prior to new service connection date. Advertised services and features not available in all areas. All offers may be modified or discontinued at any time without notice. Applicable taxes and fees based on the full price of all products and services, and no taxes, fees or shipping and handling charges will be added to any reward or rebate. Long distance provided by BellSouth® Long Distance, Inc. ©2005 BellSouth Corporation. All trademarks and service marks contained herein are the property of their respective owners.

Welcome to BellSouth!

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[shop additional BellSouth services and plans](#)

[more info](#)

## > Welcome to BellSouth!

### Savings Start Here



#### Want to simplify your life?

If so, let us make things easier with this special offer. You'll love it.

#### Why BellSouth?

Only BellSouth delivers the quality, service, reliability, and savings you deserve. There's no need to go anywhere else.

#### See for yourself.

Sign up with BellSouth today and save.

### How Much Can I Save?

#### Your Special Offer

For just \$56.63 per month,

#### Local Calling Plan:

- Residential Line With Unlimited Local Calls

#### Long Distance Plan:

- BellSouth® Nickel Savings Value plan

#### DIRECTV®:

- DIRECTV® Service from BellSouth

#### Plus...you also get:

- \$50.00 cash back
- 2 Free Features
- \$41.00 Connection Fee Waived!
- BellSouth® Voice Mail Service

[order now](#)



ba



shop adk  
services (

## > Welcome to BellSouth!

### Savings Start Here



**Want to see some real heroics?**  
We have a money-saving offer that is just right for you.

**Why BellSouth?**  
That's easy. BellSouth delivers the quality, service, reliability, and savings you deserve. There's no need to go anywhere else.

**See for yourself.**  
*Sign up with BellSouth today and save.*

### How Much Can I Save?

#### Your Special Offer

For just **\$76.62** per month,

**Local Calling Plan:**  
• Residential Line With Unlimited Lo

**Long Distance Plan:**  
• BellSouth® Basic Unlimited II Sav Plan

**DIRECTV®:**  
• DIRECTV® Service from BellSouth

**Plus...you also get:**  
• 2 Free Features  
• \$41.00 Connection Fee Waived!  
• \$25 cash back for Basic Unlimited  
• BellSouth® Voice Mail Service

order now

Terms and Conditions

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services and plans

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## > Welcome to BellSouth!

### Savings Start Here



#### Get ready to save.

This offer is exactly what you have been waiting for.

#### Why BellSouth?

That's easy. Dependability, clarity, competitive pricing, and great deals. BellSouth has the right offer for you.

#### See for yourself.

Sign up with BellSouth today and save.

### How Much Can I Save?

#### Your Special Offer

For just **\$54.94** per month,

##### Local Calling Plan:

- BellSouth® Complete Choice® Plan

##### Long Distance Plan:

- BellSouth® Unlimited Savings Value plan

##### Internet Services:

- BellSouth® FastAccess® DSL Xtreme

- \$41.00 Connection Fee Waived!
- \$100 VISA Reward Card
- FREE BellSouth® Voice Mail Service

[order now](#)

## **EXHIBIT B**

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. P-100, SUB 72b

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Implementation of Session Law 2003-91,	)
Senate Bill 814 Titled "An Act to Clarify the	)
Law Regarding Competitive and Deregulated	)
Offerings of Telecommunications Services"	)
	<b>ORDER RULING ON MOTION REGARDING PROMOTIONS</b>

BY THE COMMISSION: On June 25, 2004, the Public Staff filed a Motion for Order Concerning Eligibility for One-Day Notice and ILECs' Obligations to Offer Promotions to Resellers. On July 7, 2004, the Commission issued an *Order Seeking Comments on the Public Staff's Motion Regarding Promotions* with initial comments due no later than August 6, 2004 and reply comments August 24, 2004. The following parties or groups of parties filed timely initial comments: the Public Staff; BellSouth Telecommunications, Inc. (BellSouth); Time Warner Telecom of North Carolina, L.P., US LEC of North Carolina, Inc., and Southeastern Competitive Carriers Association (collectively, the "Joint Commenters"); and ALLTEL Carolina, Inc., Carolina Telephone and Telegraph Company, Central Telephone Company, and Verizon South Inc. (collectively, the "ILECs").

By *Supplemental Order* issued on August 24, 2004, the Commission granted the Public Staff's Motion for an extension of time until August 31, 2004, for all parties to file reply comments. The following parties filed timely reply comments: the Public Staff, BellSouth, Verizon South Inc. (Verizon), and Carolina Telephone and Telegraph Company (Carolina) and Central Telephone Company (Central) (collectively, "Sprint").

**PUBLIC STAFF'S MOTION**

The Public Staff's Motion sought the Commission's further guidance on the proper construction of the provision in G.S. 62-133.5(f) authorizing the filing on one day's notice and without Commission approval of

any promotion or bundled service offering for residence or business customers involving both regulated and nonregulated services that feature price discounts that apply exclusively to services not regulated by the Commission.

G.S. 62-133.5(f). Specifically, the Public Staff sought guidance on construction of the statutory language as it relates to matters regarding promotional discounts/nonregulated

service as set forth below. In addition, the Public Staff sought guidance, also as set forth below, on the application of the resale obligation created by TA96.

A. Promotional Discounts/Nonregulated Service

1) *Are gift cards, checks, coupons for checks or similar types of benefits promotional discounts or nonregulated services, as Carolina/Central have contended?*

The **Public Staff** argued that bill credits, gift cards, checks or coupons offered to customers by a company's regulated business as a promotion to encourage subscription to a regulated service are promotions featuring price discounts. When inducements such as gift cards are given in exchange for subscription to both regulated and nonregulated services, the customer effectively receives a price discount even though the company's tariffed price for the regulated service remains unchanged. It is irrelevant whether the cost of the telecommunications service is directly affected or the customer reduces his expenses elsewhere through use of a gift card, check or coupon. The Public Staff further stated that gift card type promotions are not telecommunications services.

The **Joint Commenters** noted that, while not "services" according to the definition in G.S. 62-3(27), gift cards, checks, coupons and similar incentives are discounts offered to induce customers to purchase certain specified services. In order to invoke the one-day notice provision of Section 62-133.5(f) applicable when a discount applies solely to nonregulated services, the company offering the promotional discount has the burden of establishing that such discount applies only to the nonregulated portion of a mixed or bundled regulated/nonregulated service offering.

**BellSouth** contended that gift cards, checks, coupons for checks and similar types of benefits are marketing incentives. According to BellSouth, such incentives are not telecommunications services, nor are they promotional discounts, since customers are not provided a reduction, i.e., a discount, from the retail price of the service(s) offered in conjunction with the incentive(s).

According to the **ILECs**, gift cards, checks, coupons for checks and similar types of benefits are themselves nonregulated services. Sprint maintained in its reply comments that any services, such as gift cards, checks or check coupons, not contained in Carolina's and Central's General Subscriber Services or Intrastate Access Tariffs are not regulated by the Commission and are, therefore, nonregulated services. Verizon noted in its reply comments that gift cards, checks and coupons are marketing incentives, not regulated services. Verizon further stated that gift card type incentives cannot be considered promotional discounts because they cannot be used to reduce the retail price a customer pays for regulated services.

## DISCUSSION OF QUESTION A-1

The Commission agrees with the Joint Commenters and the Public Staff inasmuch as they argued (1) that gift cards, checks, check coupons and similar benefits offered as an inducement to purchase telecommunication services are not themselves services (regulated or nonregulated) offered by a public utility, and (2) that such inducements are promotional discounts nonetheless. The Commission is persuaded that anything of economic value paid, given, or offered to a customer to promote or induce purchase of a bundled service offering of both regulated and nonregulated telecommunications services is a promotional discount. Gift cards and similar benefits or incentives are not services offered by a public utility and they are not being offered by local exchange carriers as either regulated or nonregulated services. However, when such benefits are offered to induce the purchase of regulated and/or nonregulated services these benefits are promotional discounts. While the retail price to the customer of neither the regulated or nonregulated portions of the bundle is necessarily lowered as part of gift card type promotions, the customer nevertheless receives the offered bundle for a savings because the gift card, check, coupon for check, or other thing of value provided returns value to the customer for the purchase of a bundle. The customer does not receive this savings or value unless he purchases the specified bundle associated with the promotion. Thus, because the savings or benefit is received only in exchange for the purchase of the bundle, the bundle is in effect discounted to the customer by the amount of the monetary benefit or thing of value provided in return.<sup>1</sup>

2) *If such benefits are promotional discounts rather than nonregulated services, in what cases are the promotional discounts considered "price discounts that apply exclusively to services not regulated by the Commission"?*

The **Public Staff** argued that, only when the benefit of promotional discounts is funded solely from nonregulated operations of the local exchange carrier, are such discounts price discounts that apply exclusively to services not regulated by the Commission. The Public Staff stated that since the statute restricts the one-day notice provision to cases in which price discounts apply exclusively to services not regulated by the Commission, the burden rests on the company offering the promotional discount to establish that the promotional discount applies exclusively to nonregulated services, i.e., is funded from nonregulated operations. The Public Staff commented that a bundle typically has one price for two or more services, making it impossible to discern, without further information, which services in the bundle have been discounted.

The **Joint Commenters** implicitly agreed that a price discount applies exclusively to nonregulated services when a promotion is funded solely from nonregulated service offerings and the revenue from the regulated portion of a mixed offering is "booked" at the full retail rate or value. The Joint Commenters stated that to

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<sup>1</sup> Also, as discussed below in Part B of this Order, the real price of the service eventually becomes the retail price minus the value received for purchasing the service, i.e., the price is discounted by the value received. After a promotion is offered for a long enough period of time, the tariffed retail price is then no longer the real price.

the extent a LEC seeks to invoke the one-day notice provision of G.S. 62-133.5(f) with respect to gift card type incentives, the burden should be on the LEC to demonstrate that the promotional discount generated by the incentive is solely applied to (charged against) the nonregulated portion of any mixed bundle of regulated and nonregulated services. According to the Joint Commenters, if the regulated portions of a bundled offering are accounted for or "booked" at less than the retail value of the regulated services, then the discount does not apply exclusively to nonregulated services and the one-day notice provision of G.S. 62-133.5 is not applicable to the LEC's promotion.

**BellSouth** stated that since these benefits are not promotional discounts, Question A-2 is not applicable.

The **ILECs** also found Question A-2 inapplicable since they argued that gift card type benefits are not promotional discounts, but are nonregulated marketing incentives. However, the ILECs, Verizon and Sprint suggest that if a promotion is found to feature a price discount for subscription to a bundled service offering of regulated and nonregulated services, and the offering company does not lower or in any way alter the price for the regulated service portion of the bundle, it is fairly simple to determine that the discount for the promotional offering was applied exclusively to the nonregulated service. Therefore the one-day notice of Section 133.5(f) would apply to the promotion.

#### **DISCUSSION OF QUESTION A-2**

Promotional discounts are considered "price discounts that apply exclusively to services not regulated by the Commission" when the benefit of the discount is funded solely from or charged against the nonregulated operations of the local exchange carrier. The LEC<sup>2</sup> is entitled to invoke the one-day notice provision of G.S. 62-133.5(f) when the promotional discount is not used to lower retail revenues of any regulated service offered as part of a mixed bundle, but is instead applied to or accounted for against revenues for nonregulated services contained in the bundle.

3) *Does the source of the discount offered in a promotion, i.e., from regulated or nonregulated operations or both, determine whether a one- or five-day notice is required if the promotion otherwise qualifies as a one business-day promotion?*

The **Public Staff** stated that, if the price of the regulated and nonregulated services in the bundle is lower than the sum of the individual prices, it is reasonable to conclude that the price of one or more of the services in the bundle has been discounted. The Public Staff argued that additional information is needed to confirm that such a discount was applied only to the nonregulated service(s) in the bundle. In some cases, the nonregulated services are not available individually, so it is not always possible to determine the price of the individual services. The Public Staff believes that the regulated company has an obligation to specify whether the marketing incentive or price discount is provided by or charged against regulated or nonregulated operations. If

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<sup>2</sup> The Commission uses the term "LEC" to refer to local exchange carriers, including competing local providers, unless otherwise stated.

the regulated operations of the company will record the tariffed price of the regulated service as revenue (or, conversely, if the cost of the promotion is not recorded as a regulated expense), it is reasonable to conclude that the price discount has been taken only on the nonregulated service(s) in the bundle, qualifying the promotional offer for the one business day notice provision. Otherwise, an ILEC bundle or promotion must be made under the five business-day provision of the ILEC tariffs. Specification of the source of the price discount is a reliable, determinative factor for ensuring that notice of the promotion or bundle has been properly filed.

The **Joint Commenters** stated that in order to use the one-day notice provision, the company offering the promotional discount has the burden of showing that the exclusive source of funding for any promotional discount offered as an incentive to purchase a mixed bundle is nonregulated service operations. The Joint Commenters believe the source should be identified through accounting records that will show whether any discount was applied to or accounted for against regulated service operations or nonregulated service operations.

**BellSouth** emphasized that it is not the accounting treatment of the benefit or marketing incentive that determines the proper notice period, but whether a price discount is being offered. BellSouth maintained that gift card type promotions are mere incentives and do not provide price discounts against the services offered, since such promotions do not impact or reduce the retail price of the bundled service package purchased by the customer.

The **ILECs** again stated that the only necessary test for determining whether there is a discount applicable exclusively to the nonregulated services in a mixed bundle is to determine whether the price for any regulated services in the bundle has been lowered. If the price for a regulated service has been lowered, a five-day notice filing is required. If a price discount is present without any lowering of the regulated price, the Commission must determine that the discount was applied exclusively to the nonregulated service in the bundled offering and that one-day notice to the Commission of the promotion is all that is required. The ILECs maintained that if services in a bundle or promotion offered by a company operating under price regulation include any nonregulated service, there should be no consideration of the source of the funds for the promotion or discount.

### **DISCUSSION OF QUESTION A-3**

Whether a new promotion featuring a price discount applies exclusively to services not regulated by the Commission is what determines whether a LEC is entitled to invoke the one-day notice provision of G.S. 62-133.5(f). Accordingly, the real question raised by the Public Staff's Motion is whether the source of funding for a promotional discount must come from nonregulated service operations in order for a LEC to establish that the featured promotional price discount applies exclusively to services not regulated by the Commission. The Commission believes, as argued by the Public Staff and the Joint Commenters, that the source of funding for any promotional

discount is determinative of whether the discount "applies exclusively to services not regulated by the Commission." If the discount is funded in whole or in part by charging it to a regulated service or the regulated service operations, then it would not apply exclusively to nonregulated services or operations and the LEC offering the promotion would not be entitled to avail itself of the one-day notice provision.

4) *If the source of the discount determines whether a one- or five-day notice is required, should the Commission require that [a LEC] specify in its filing whether the benefit offered in conjunction with a promotion is funded by nonregulated operations, regulated operations, or both so that the Public Staff can determine whether the promotion is properly filed?*

The **Public Staff** in effect argued that if the source of funding is determinative of whether a promotion "appl[ies] exclusively to services not regulated by the Commission" and therefore the Commission need only receive one day's notice prior to the effective date of the promotion, then the Commission's *Order* dated January 2, 2004 must be expanded to include a specification of the source of the funding for the promotional discount. The Public Staff claimed that without further information from companies regarding the source of a promotional discount, the Public Staff and Commission are unable to monitor promotions and to ensure that the proper amount of notice has been given.

The **Joint Commenters** requested the Commission to impose upon LECs seeking to invoke the one-day notice provision in G.S. 62-133.5(f) the requirement that their notices contain more specific information in support of their filings made pursuant to the one-day notice provision of the statute. The Joint Commenters proposed a rule that would address the LEC's internal accounting procedures as they may relate to G.S. 62-133.5(f). The Joint Commenters stated that without the adoption of appropriate and detailed protective mechanisms and guidance concerning LEC bundling and promotions, the one-day notice provision is extremely difficult to administer and could lead to anticompetitive behavior.

**BellSouth** argued that the source of funding does not determine the proper amount of notice and that it is not required by any statute or rule to give any notice of marketing incentives. BellSouth reiterated that gift card promotions are marketing incentives—not promotional discounts that impact the retail price of any service. Because these types of promotions are not discounts, they do not require any notice whatsoever pursuant to any North Carolina statute or rule. However, BellSouth stated that it "does not object generally to providing information indicating whether marketing incentives [such as gift card promotions] are funded by regulated and/or non-regulated operations."

The **ILECs** opposed the imposition of any requirement that LECs provide information in addition to that required by the Commission's *Order* dated January 2, 2004. The ILECs stated that any requirement by the Commission of anything more than a statement from carriers describing the promotional/bundled service offerings, and the

dates during which those offerings would be made available, would suggest that Commission has approval authority not provided for in G.S. 62-133.5(f). Further, the ILECs suggested that the Commission's *Order* dated January 2, 2004 requires more information in notices of promotional offerings than the statute requires. In its reply, Sprint answered that the Commission should not require LECs to provide any additional information regarding the funding source for a promotion. Sprint noted that perhaps the Public Staff's proposal may be justified for those companies which are rate of return regulated. However, examination of a price regulated company's financial accounting by the Public Staff is not required or appropriate.

#### DISCUSSION OF QUESTION A-4

While, as discussed above, the Commission finds the source of funding for promotional discounts, such as gift cards, relevant to the determination of whether a discount applies exclusively to the nonregulated services in a mixed bundle of services, thereby qualifying the promotion for the one-day notice requirement, the Commission rules that there is no need to expand its *Order* dated January 2, 2004, regarding the content of notices provided under G.S. 62-133.5(f). Pursuant to the statute at issue, a LEC is not entitled to give the Commission one business day's notice *unless* the promotion or bundled service offering (1) involves both regulated and nonregulated services and (2) features a price discount that applies exclusively to the nonregulated services. Therefore, the Commission need not impose a requirement that the LEC specify the funding source for its promotion in its one-day notice filing. When a LEC purports to file a one-day notice pursuant to G.S. 62-133.5(f) for a promotional offering involving both regulated and nonregulated services, it is representing that any discount applies exclusively to nonregulated services, i.e., that it has chosen to fund any discount from its nonregulated operations.

Thus, as argued by the ILECs, if a LEC provides the Commission with one-day notice of a promotion and a price discount is present without any lowering of the regulated price, the Commission will view the one-day notice as the LEC's representation that the discount was applied exclusively to the nonregulated service in the bundled offering in accordance with the reasoning of this *Order*. The Commission's decision does not impose internal accounting procedures on the LECs; rather, by submitting a one-day notice under G.S. 62-133.5(f), a LEC, on its own volition, has elected to fund its promotion from its nonregulated operations. The Commission still believes, as asserted by the Public Staff in earlier comments when the Commission was initially requested to adopt rules related to the notice required under G.S. 62-133.5(f), that imposing unnecessary "rules" or requirements on notices for promotions and bundled service offerings could make it more difficult and more time-consuming for LECs than the Legislature intended when it enacted the one-day notice provision and exempted these types of offerings from the Commission's approval authority.

In sum, the Commission finds that companies who avail themselves of the one-day notice provision of G.S. 62-133.5(f) necessarily represent that any promotional discount applies exclusively to the nonregulated portion of a mixed bundle, and that any

such discount given for the purchase of a mixed bundle will be funded, accounted for or applied against only the nonregulated portion of the bundle. Therefore, for all regulatory purposes and required filings, regulated companies must assign the full tariff rate to sales of (or revenues from) regulated services that were subscribed to as a result of promotional discounts involving bundled offerings of both regulated and nonregulated services.<sup>3</sup> LECs who invoke the one-day notice provision should keep records regarding the funding of their promotion and be mindful that they are subject to audit. See G.S. 62-51.

#### B. Resale Obligation

1) *If a LEC offers a benefit in the form of a check, a coupon for a check, or anything else of value for more than ninety days to incent subscription or continued subscription to a regulated service, is it required that the benefit be offered to resellers in addition to the reseller discount?*

The **Public Staff** alleges that BellSouth's 1FR + 2 Cash Back promotion, which provides subscribers with a \$100 check for subscribing to certain services, is implicated by Question B-1. The Public Staff argued that when inducements such as gift cards are offered to promote new or continued subscriptions to regulated telecommunications services, the regulated services are discounted. The resulting discount, brought about by the inducing promotion, should be available to resellers at the discounted resale rate whenever the promotion is offered for more than 90 days. The FCC's Local Competition Order makes no distinction between charging a reduced price for service, and charging the standard tariff rate while awarding the customer with a check or a coupon for a check.

The **Joint Commenters** declined to take a position with respect to resale obligations related to gift card type promotions offered for the purchase of bundles of both regulated and nonregulated services.

**BellSouth** stated that gift cards, coupons, etc. are not telecommunications services and therefore are not subject to the resale obligation of TA96. Gift card type promotions are marketing tools that do not provide end-user customers with a reduction of the price of the ILEC's services.

The **ILECs** argued that marketing incentives, gift cards, checks, coupons for checks, and similar incentives are not telecommunications services and are not subject to the resale requirements of the Act. Sprint reiterated that the obligation to resell

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<sup>3</sup> The Commission notes that it is not concerned with the rate of return of price regulated companies such as the ILECs who filed comments. However, inquiring into the source of funding for purposes of applying G.S. 133.5(f) is not the same as inquiring into a company's rate of return. The Commission's interest is not in a company's margins or profits or in any particular amount of reduction of revenues; the Commission's interest is in whether the costs (no matter the amount) of a given promotion were applied to nonregulated services.

services does not extend to nonregulated services (i.e., incentives, gift cards, checks etc.) offered with regulated services.

### DISCUSSION OF QUESTION B-1

At the outset, the Commission notes that Question B-1 does not address mixed bundles of regulated and nonregulated services. Instead, Question B-1 is directed to promotions that offer a gift such as a gift card or a check for cash in exchange for subscribing to regulated services.

Section 251(c)(4) of TA96 addresses the extent to which an ILEC may restrict resale of its retail telecommunications services. Section 251(c)(4) requires an ILEC "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." This Section further requires ILECs "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of . . . telecommunications service" provided at retail to end-user subscribers. Section 252(d)(3) provides that wholesale rates are to be determined on the basis of rates charged to subscribers.

While gift cards, check coupons and other similar promotions or incentives offered for the purchase of a regulated telecommunications service are not themselves services that ILECs offer at retail from their tariffs, they are promotional offerings for telecommunications services. Promotional offerings are subject to the limitations and conditions set forth by the FCC. In ¶ 948 of its Local Competition Order<sup>4</sup>, the FCC stated that Section 251(c)(4)'s requirement that ILECs resell retail telecommunications services

makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings. We therefore conclude that no basis exists for creating a general exemption from the wholesale requirement for *all promotional or discount service offerings* made by incumbent LECs. [Emphasis added.] A contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act. In discussing promotions here, we are only referring to price discounts from standard offerings that will remain available for resale at wholesale rates, i.e., temporary price discounts.

The Commission interprets ¶ 948 of the FCC's Local Competition Order to mean that an ILEC's duty to resell telecommunications services it offers at retail does not exclude an ILEC's promotional offerings. The FCC clearly stated that any other conclusion would allow ILECs routinely to create promotions or nonstandard offerings just to avoid their resale obligation. The FCC was concerned that ILEC promotions could become *de facto* standard offerings that would not be made available to resellers

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<sup>4</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, (CC Docket 96-98); First Report and Order, FCC No. 96-325, 11 FCC Rod 15499 (rel. August 8, 1996) ("Local Competition Order").

and would therefore undercut the duty to resell retail services to resellers at wholesale rates. The FCC's statement that the subject of its discussion on promotions referred to "price discounts from standard offerings that will remain available for resale at wholesale rates, i.e., temporary price discounts," does not define or limit the term "promotion," as used by the FCC in its Order, to a reduction from the retail price of a tariffed service. Rather, the FCC was speaking to the temporary nature of a promotion. The term "promotion" in the context of a sale or advertising campaign usually refers to an opportunity or offer that is temporary or short-term, rather than one that is more permanent or long-lasting.<sup>5</sup> The FCC distinguished a promotional price discount from a "standard offering" that would remain available for sale at retail and therefore available for resale at the wholesale rate. Contrasted with a promotional offering, a standard offering is one that is of a more permanent, long-lasting nature. When the reference to a promotion as a price discount is read in context, the Commission believes it is clear that the FCC was not stating that a promotion exists only when there is a reduction or discount of the retail price of a telecommunications service.<sup>6</sup>

The Commission's interpretation of ¶ 948 of the FCC's Order is supported by the Order's next paragraph. In ¶ 949, the FCC immediately began a discussion of whether "short-term promotional prices" are "retail rates." Since resale wholesale rates are based on retail rates, state commissions setting wholesale rates must know if the rates for promotions, i.e., short-term prices, are "retail rates" that are to be discounted to the wholesale rates that ILECs must offer to resellers. Because TA96 does not define "retail rates," the FCC interpreted the meaning of the term as follows:

In view of this ambiguity, we conclude that "retail rate" should be interpreted in the light of the pro-competitive policies underlying the 1996 Act. We recognize that promotions that are limited in length may serve procompetitive ends through enhancing marketing and sales-based competition and we do not wish to unnecessarily restrict such offerings. We believe that, if promotions are of limited duration, their procompetitive effects will outweigh any potential anticompetitive effect. We therefore conclude that short-term promotional prices do not constitute retail rates for the underlying services and are thus not subject to the wholesale rate obligation.<sup>7</sup>

Thus, short-term promotional prices or nonstandard offerings are not the "retail rate" for purposes of establishing the wholesale rate. If a promotion is offered for an indefinite extended period of time, at some point it starts to become or look more like a standard

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<sup>5</sup> The Commission's interpretation is supported by the FCC's opinion and order in *In the Matter of American Communications Services, Inc.*, (CC Docket 97-100); FCC No. 99-386, 14 FCC Rcd 21579 (rel. December 23, 1999), ¶¶ 41, 51 (noting that phrases such as "service packages" and "trial offerings" connote an element of a temporary price discount).

<sup>6</sup> The FCC's use of the phrase "all promotional or discount service offerings" in ¶ 948 of the Local Competition Order implies a distinction between a promotional service offering and a discount service offering. That is to say, the FCC appears to have contemplated that an ILEC could offer a promotion that would not necessarily result in a reduced service price per se.

<sup>7</sup> Local Competition Order, ¶ 949.